

Message Text

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ACTION EB-08

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FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 6102

AMEMBASSY BONN

INFO USMISSION BRUSSELS

USDEL MTN GENEVA

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DEPT PASS TO COMMERCE/BIPR AND OIM

E.O. 11652: N/A

TAGS: ETRD, EEC, JA, GW, US

SUBJECT: COMMENTS ON FRG DRAFT ON BUSINESS IN JAPAN

REF: A. BONN 03591 B. TOKYO A-115, 3/6/75 (NOTAL)

1. SUMMARY: EMBASSY WELCOMES CHANCE TO COMMENT ON SOME OF PROBLEMS THAT FACE U.S. AND GERMAN EXPORTERS IN THEIR ATTEMPTS TO PROSPER IN JAPANESE MARKET. GOJ SEEMS HONESTLY CONCERNED ABOUT CRITICISMS DIRECTED AGAINST ITS FORMIDABLE BARRIERS TO TRADE--SOME OF WHICH ARE PROBABLY LEGALLY CLASSIFIABLE AS NON-TARIFF MEASURES AND SOME WHICH ARE SIMPLY LONG-ESTABLISHED WAYS OF DOING BUSINESS IN JAPAN. MITI HAS RECENTLY ASKED OUR HELP IN IDENTIFYING DIFFICULT AREAS. EMBASSY BELIEVES PUBLIC AIRING OF PROBLEMS U.S. AND EUROPE FACE HERE WILL HAVE SALUTORY EFFECT AND URGES CONTINUED INTERNATIONAL ATTENTION. EMPAHSIS, HOWEVER, SHOULD BE ON LIMITED OFFICIAL USE

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FACTORS UNDER GOJ CONTROL WHICH INHIBIT IMPORTS RATHER THAN ON DIFFERENCES OF DOING BUSINESS IN JAPAN END SUMMARY.

2. TO ASSIST DEPARTMENT AND EMBASSY BONN IN RESPONDING TO FRG ECONOMIC MINISTRY, EMBASSY OFFERS FOLLOWING COMMENTS ON FRG DRAFT DISCUSSION OF PROBLEMS ENCOUNTERED BY GERMAN FIRMS IN JAPAN, OUTLINED PARA 3 REFTEY. COMMENTS BASED

PRIMARILY ON INFORMATION OBTAINED FROM U.S. FIRMS AND IMPORTERS IN PAST. SINCE PROBLEMS DESCRIBED IN SEVERAL OF THE EXTRACTS (E.G. RE "CONSIGNMENT DEPOTS," OPERATION OF "HARBOR SHIPPING TRADE" AND "TRANSOCEANIC TRANSPORTATION") ARE NOT CLEAR, NO ATTEMPT HAS BEEN MADE TO COMMENT ON THEM. DISCUSSION IN PARAS 4-6 BELOW ROUGHLY FOLLOWS OUTLINE PARA 3 REFTEL.

3. KAPLAN'S 1972 STUDY MENTIONED REF B. "JAPAN, THE GOVERNMENT-BUSINESS RELATIONSHIP STILL PROVIDES MANY USEFUL INSIGHTS INTO FUNCTIONING AND STRENGTHS OF JAPAN'S UNIQUE ECONOMIC SYSTEM, THOUGH IT CONTAINS LITTLE INFORMATION DIRECTLY RELATED TO POINTS RAISED IN FRG DRAFT. REF B. CONTAINS ADDITIONAL INFORMATION ON NTB'S IN JAPAN.

4. INSTITUTIONAL AND ADMINISTRATIVE DIFFICULTIES
(A) GENERAL TRADING FIRMS--SINCE HUNDREDS OF BOTH AGRICULTURAL AND INDUSTRIAL PRODUCTS, INCLUDING MANY INTRODUCED IN RECENT YEARS, ARE IMPORTED BY THE LARGE JAPANESE GENERAL TRADING COMPANIES (SOGO SHOSHA), IT WOULD BE DIFFICULT TO DESCRIBE THESE INSTITUTIONS AS OBSTACLES TO U.S. IMPORTS. THIS IS NOT TO SAY THAT COMPETING ON THEIR HOME TURF WITH THESE LARGE ORGANIZATIONS (WHICH HAVE CLOSE INSTITUTIONAL AND FINANCIAL TIES WITH LARGE BROAD-BASED INDUSTRIAL GROUPINGS) CAN NOT BE EXTREMELY DIFFICULT IN SOME FIELDS. A PERENNIAL DEBATE AMONG U.S. BUSINESSMEN IS WHETHER ONE SHOULD MAKE USE OF THESE SOGO SHOSHA TO PENETRATE JAPANESE MARKET. PROS--THEIR LARGE DISTRIBUTION SYSTEMS AND FINANCIAL RESOURCES, ORGANIZATIONAL STRUCTURE TO HANDLE ALL ADMINISTRATIVE MATTERS AND GOVERNMENT RED-TAPE, WIDE LIMITED OFFICIAL USE

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BUSINESS CONTACTS; CONS-HIGH OVERHEAD COSTS, HANDLING OF TOO MANY (AND SOMETIMES COMPETING) PRODUCTS, FOREIGN FIRMS' LOSS OF CONTROL OVER MARKETING ACTIVITIES. OPTIONS AVAILABLE WHICH HAVE BEEN USED BY MANY U.S. FIRMS INCLUDE GOING IT ALONE. JOINT VENTURES, AND USE OF ONE OF THE SMALLER, SPECIALIZED TRADING COMPANIES WHICH IN MANY FIELDS CAN COMPETE EFFECTIVELY WITH THE SOGO SHOSHA.

(B) HIGH COSTS OF OPERATING OWN SALES NETWORKS
HIGH WAGE RATES, EXTREME SPACE PROBLEMS WHICH MAKE OFFICE, WAREHOUSE, AND OTHER FACILITIES VERY EXPENSIVE, NEED FOR ABNORMALLY LARGE ADMINISTRATIVE STAFFS TO COPE WITH GOVERNMENT RED-TAPE ARE AMONG FACTORS WHICH MAKE STARTING BUSINESS AND CONTINUING TO OPERATE IN JAPAN, EXTREMELY COSTLY.
(IN 1975 EMBASSY ESTIMATED THAT TO SET UP SMALL REPRESENTATIVE OFFICE IN TOKYO EMPLOYING ONE AMERICAN WOULD COST AT LEAST \$120,000-150,000 IN ADDITION TO SALARY AND ALLOWANCES OF THE AMERICAN.) IN ADDITION TO THESE HIGH COSTS, MANY U.S. FIRMS HAVE BEEN DISCOURAGED FROM

ATTEMPTING TO GO IT ALONE BECAUSE OF COMPLEXITIES OF
DISTRIBUTION SYSTEMS IN MANY FIELDS AND FREQUENT
ADVISABILITY OF MAKING USE OF EXISTING JAPANESE PERSONAL AND
BUSINESS RELATIONSHIPS TO ACHIEVE SALES OBJECTIVES AND CARRY
ON OTHER OPERATIONS.

(C) ACCESS TO FINANCIAL RESOURCES

U.S. FIRMS IN GENERAL APPEAR TO HAVE NO SERIOUS DIFFICULTY
IN OBTAINING LOANS FROM JAPANESE BANKS FOR OPERATIONS IN
JAPAN. IT IS VERY POSSIBLE THAT FOREIGN FIRMS WOULD HAVE
MORE DIFFICULTY IN OBTAINING FINANCIAL SUPPORT FROM JAPANESE
BANKS FOR ACTIVITIES OUTSIDE OF JAPAN. THE DIRECT INVOLVEMENT
OF A LARGE TRADING COMPANY IN SUCH FOREIGN ACTIVITIES WOULD
LIKELY MAKE CREDIT FACILITIES MORE READILY AVAILABLE.

(D) IMPORT PAYMENT REGULATIONS
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IN A SURVEY OF IMPORTERS OF U.S. EQUIPMENT IN 1974 (STILL
CONSIDERED VALID), EMBASSY FOUND THAT GOJ REQUIREMENT FOR
PAYMENT OF IMPORTS WITHIN 4 MONTHS - KNOWN AS STANDARD METHOD
OF PAYMENT (SMS) - IS MINOR IRRITANT RATHER THAN IMPORTANT
IMPEDIMENT TO TRADE. IMPORTERS INDICATE THAT GOJ
INVARIABLY AUTHORIZES WAIVER TO SMS UPON REQUEST, BUT
ADMITTEDLY PROCEDURES ARE BURDENSOME AND SOMETIMES REQUIRE
AS LONG AS THREE TO FOUR WEEKS.

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5. CUSTOMS

IF THERE WERE POLL AMONG AMERICAN, AND OTHER FOREIGN, BUSINESSMEN IN JAPAN, CUSTOMS DEPARTMENT (MINISTRY OF FINANCE) WOULD UNDOUBTEDLY WIN HANDS DOWN AS MOST EFFECTIVE INSTITUTIONAL IMPEDIMENT TO IMPORTS. CUSTOMS PERSONNEL SHORTAGES ARE VASTLY AGGRAVATED BY OVERLY STRICT AND, SOMETIMES ARBITRARY, APPLICATION OF RATHER ARCHAIC PROCEDURES WHICH FREQUENTLY LEAD TO LONG DELAYS AND SIZABLE ADDITIONAL CLEARING COSTS. WITHOUT EXPERIENCED STAFF TO DEAL WITH CUSTOMS PROBLEMS, FOREIGN FIRMS CAN FACE SERIOUS PROBLEMS. RE SPECIFIC POINTS IN FRG DRAFT:

(A) CUSTOMS UPLIFT-- MAJOR PROBLEM FACED BY SMALL NUMBER OF U.S. FIRMS IN THIS REGARD IS JAPANESE PRACTICE OF INCLUDING ADVERTISING EXPENSES IN CALCULATING DUTIABLE COSTS OF IMPORTS. THOUGH THIS IS IN ACCORDANCE WITH THE PROVISIONS LIMITED OFFICIAL USE

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ON CONVENTION ON VALUATION OF GOODS FOR CUSTOMS PURPOSES, APPLICATION IS APPARENTLY RATHER ARBITRARY. PERHAPS MORE SERIOUS PROBLEM IS UNUSUAL DEFINITIONS OF CERTAIN TYPES OF EQUIPMENT APPLIED BY CUSTOMS OFFICIALS WHICH NECESSITATE PAYMENT OF HIGHER CUSTOMS DUTIES.

(B) REFUNDS

ALTHOUGH OBTAINING CUSTOMS PAYMENT REFUNDS FOR RE-EXPORTS DOES INVOLVE RATHER COMPLICATED PROCEDURES, THIS IS NOT MAJOR PROBLEM FOR U.S. FIRMS. GOJ HAS PROCEDURES, WHICH HAVE BEEN USED IN MANY CASES BY U.S. FIRMS, FOR EXEMPTING FROM CUSTOMS DUTY THOSE COMPONENTS WHICH WILL BE INCORPORATED IN EQUIPMENT FOR EXPORTATION. IF AUTHORIZATION IS NOT APPLIED FOR AT TIME OF IMPORT, HOWEVER, PROCESS IS MUCH MORE DIFFICULT.

6. PATENTS AND LICENSES

(A)-FTC - IF U.S. FIRMS EXPERIENCE PROBLEMS MENTIONED RE FTC, THESE ARE PROBABLY LITTLE MORE THAN MINOR IRTANTS.

(B) PATENTS

THOUGH SITUATION HAS IMPROVED CONSIDERABLY IN RECENT YEARS, BECAUSE OF HUGE BACKLOGS IN PATENT OFFICE, PATENT REGISTRATION BY BOTH FOREIGN AND DOMESTIC FIRMS NORMALLY TAKES AS LONG AS 3-4 YEARS, AND WHEN DISPUTE IS INVOLVED MAY DRAG ON AS LONG AS 10 YEARS. HIGH REGISTRATION FEES, LAWYERS FEES, AND TRANSLATION COSTS CAN MAKE PROCESS PARTICULARLY EXPENSIVE FOR FOREIGN FIRMS, BUT THIS DOES NOT CONSTITUTE SERIOUS IMPEDIMENT TO MOST IMPORTS OR DOING BUSINESS IN JAPAN.

(C) PRODUCT TESTING AND LICENSING

EMBASSY AGREES GOJ TESTING REQUIREMENTS AND REGISTRATION LIMITED OFFICIAL USE

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PROCEDURES FOR PRODUCTS LISTED IN THE FRG DRAFT FREQUENTLY CONSTITUTE EFFECTIVE NTB'S. GOJ REGULATIONS SELDOM AUTHORIZE ACCEPTANCE OF FOREIGN TESTING RESULTS. CONSEQUENT EXTRA COSTS FOR RETESTING IN JAPAN AND RESULTING DELAYS IN MARKET ENTRY FOR SUCH PRODUCTS AS PHARMACEUTICALS, MEDICAL EQUIPMENT AND CHEMICALS NOT ON AUTHORIZED LISTING CAN PUT FOREIGN MANUFACTURERS AT DISTINCT DISADVANTAGE COMPARED TO THEIR DOMESTIC COUNTERPARTS. TESTING CRITERIA FOR MEDICAL EQUIPMENT, CHEMICALS AND OTHER PRODUCTS ARE OFTEN VAGUE, LEAVING ROOM FOR ARBITRARY INTERPRETATION BY GOJ OFFICIALS. RECENTLY REVISED MINISTRY OF HEALTH AND WELFARE REGULATIONS PROVIDE FOR ACCEPTANCE OF SOME PRE-CLINICAL TESTING OF PHARMACEUTICALS ABROAD BUT STILL REQUIRE ALL CLINICAL TESTING TO BE DONE IN JAPAN. RE AUTOMOBILES: WHILE CLEARLY RECOGNIZING AUTHORITY OF GOJ TO SET OWN SAFETY AND POLLUTION STANDARDS, USG AND US INDUSTRY HAVE BEEN SEEKING SIMPLIFICATION OF GOJ CLEARANCE PROCEDURES WHICH IMPEDE IMPORTS OF U.S. AUTOMOBILES. SOME SUCCESS HAS ALREADY BEEN ACHIEVED IN SHORTENING OVERALL CLEARANCE TIME BUT SOME PROBLEMS REMAIN UNDER DISCUSSION.

(D) GOVERNMENT PROCUREMENT

ALTHOUGH DIFFICULT TO DOCUMENT, IT IS OBVIOUS THAT BECAUSE OF UNWRITTEN PRACTICE EXERCISED BY MANY GOVERNMENT AGENCIES AND GOJ-OWNED CORPORATIONS, SUCH AS NIPPON PUBLIC TELEGRAPH AND TELEPHONE CORPORATION, OF LIMITING FOREIGN PROCUREMENT LARGELY TO ITEMS NOT PRODUCED DOMESTICALLY, SIZEABLE NUMBER OF U.S. FIRMS DEPRIVED OF SUBSTANTIAL SALES OPPORTUNITIES. OPPORTUNITIES FOR U.S. AND OTHER FOREIGN FIRMS OBVIOUSLY RESTRICTED BY FACT THAT GOJ REGULATIONS DO NOT REQUIRE OPEN BIDDING FOR SUBSTANTIAL AMOUNT OF GOVERNMENT PROCUREMENT. FURTHERMORE, WHEN BIDDING RESTRICTED TO LIMITED NUMBER OF

FIRMS, FOREIGN FIRMS FREQUENTLY FIND IT DIFFICULT TO MEET
STRICT CRITERIA TO BECOME AUTHORIZED BIDDERS.

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7. EMBASSY COMMENT: GOJ SEEMS TO BE HONESTLY CONCERNED ABOUT FOREIGN
CRITICISM

AGAINST ITS BARRIERS AGAINST IMPORTS FROM ABROAD. RECENTLY,
FOR EXAMPLE, MITI OFFICIALS ASKED THE EMBASSY'S ASSISTANCE
IN IDENTIFYING AREAS IN WHICH AMERICAN FIRMS ARE ENCOUNTERING
DIFFICULTIES. WE BELIEVE CONTINUED INTERNATIONAL ATTENTION
ON THE PROBLEMS EXPERIENCED BY FOREIGN FIRMS, AS EXEMPLIFIED
BY FORTHCOMING FRG-GOJ DISCUSSIONS (REF A.) CAN BE VERY
USEFUL. ALTHOUGH WE OF COURSE HAVE NOT SEEN FULL FRG DRAFT,
ON BASIS OF EXTRACTS IN REFTEL, IT WOULD APPEAR TO INCLUDE,
ALONG SOME SERIOUS IMPORT PROBLEMS, LAUNDRY LIST OF REASONS
WHY WEST GERMAN FIRMS FIND IT MORE DIFFICULT TO DO BUSINESS
IN JAPAN THAN IN GERMANY OR OTHER WESTERN COUNTRIES.

OUR EXPERIENCE INDICATES THAT IN DISCUSSIONS
WITH GOJ IT IS MORE FRUITFUL TO MAKE CLEAR THAT WE
UNDERSTAND THE DISTINCTION BETWEEN (A) MINOR PROBLEMS
THAT MAKE DOING BUSINESS IN JAPAN DIFFICULT (BUT
BY NO MEANS IMPOSSIBLE) AND OVER WHICH GOJ EXERCISES
LITTLE CONTROL AND (B) MAJOR FACTORS WHICH HAMPER
EXPORTS TO JAPAN AND OVER WHICH GOJ HAS DIRECT
INFLUENCE: E.G., GOVERNMENT PROCUREMENT, PRODUCT
TESTING REGULATIONS, AND CUSTOMS ADMINISTRATION.
SHOESMITH

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Message Attributes

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Disposition Approved on Date:
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